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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,067	09/11/2003	Bart De Laender	40987	6186

38505 7590 08/06/2007
MICHAEL W. TAYLOR
P.O. BOX 3791
ORLANDO, FL 32802-3791

EXAMINER

WILKENS, JANET MARIE

ART UNIT	PAPER NUMBER
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3637

MAIL DATE	DELIVERY MODE
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08/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/660,067	Applicant(s) LAENDER ET AL.	
	Examiner Janet M. Wilkens	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 64-73,75 and 77-95 is/are pending in the application.
- 4a) Of the above claim(s) 89-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 64-73,75 and 77-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/5/05& 9/11/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the top member with the plate above the cross supports must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 64-66, 68, 75, 77 and 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Ausavich et al (5,191,843). Aushavich teaches a pallet (Fig. 10) comprising: a top support member (3), bottom support members (2), and a plurality of solid oval support blocks (1) located in three groups. Each solid support block comprises a composite material comprising at least one cellular material and at least one thermal plastic material (wood and polypropylene or polyethylene; see column 2, lines 5-11 and column 4, line 59-64) and has portions of its upper and lower surfaces devoid of any openings (see solid portions in Fig. 2) and flat ends (upper and lower surfaces and longitudinal side surfaces; see Figs. 4 and 5 for example). Also, fasteners/nails (4) are provided. Please note that limitations found in intended use/"for" statements have been given no weight in the claims. (Note: the other shapes listed in the grouping in claim 79 being functionally equivalent to the oval shape.)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 67, 82-85 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al in view of Welleman (4,955,940). As stated above, Ausavich teaches the limitations of claim 64, including top and bottom support members with oval support blocks in between. Each solid support block comprises a composite material comprising at least one cellular material and at least one thermal plastic material (wood and polypropylene or polyethylene; see column 2, lines 5-11 and column 4, line 59-64) and has upper and lower surfaces devoid of any openings (see solid portions in Fig. 2) and flat ends (upper and lower surfaces and longitudinal side surfaces; see Figs. 4 and 5 for example). Also, fasteners/nails (4) are provided. For claims 67 and 82, Ausavich fails to teach three upper cross supports between the top plate and support members. Wellman teaches a pallet (Fig. 1; see attachment A) comprised of a top member (a) with top support members (b) and upper cross support members (c), three sets of support blocks (d) and bottom support members (e). It would have been obvious to add three support planks between the top member and blocks of Ausavich, such as is taught by Welleman, to provide more support to the top member of the pallet.

Claims 69-73, 80, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al. As stated above, Ausavich teaches the limitations of claims 64 and 68, including top and bottom support members with support blocks in between. Each solid support block comprises a composite material comprising at least one cellular material and at least one thermal plastic material (wood and polypropylene

or polyethylene; see column 2, lines 5-11 and column 4, line 59-64). For claims 69-73, 80, and 81, Ausavich fails to teach specific materials, densities/particle diameters for the materials and/or concentrations of materials used in the blocks. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the support blocks of Ausavich by using different materials, different combinations of materials having different densities, particle diameters, concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on block strength properties desired/required, the materials readily available, personal preferences, etc. It would also have been an obvious consideration to use different types of cellular material and plastics, including polyesters, epoxies and vinylesters or wood, linen flax shives, paper fiber, nut shells, bamboo, etc, for the same reasons stated above. (Note: the members in these groups of materials being functional equivalents.)

Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al in view of Breezer et al (5,351,628). As stated above, Ausavich teaches the limitations of claims 64 and 77, including top and bottom support members with support blocks in between. The support blocks have flat ends on the first and second sides (see Fig. 1). For claim 78, Ausavich fails to specifically teach that the ends of the third and fourth sides are also flat. Breezer teaches a pallet (Fig. 1) having support blocks (34,36) with more than six flat sides, including having first, second, third and fourth flat ends. First, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the ends of the support blocks of Ausavich by adding flat

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portions to its third and fourth sides, such as is taught by Breezer, for aesthetic reasons. Second, it would have been an obvious design consideration to make the blocks various shapes, including a shape with six or more flat sides, such as is taught by Breezer or known in the art, also for aesthetic reasons.

Claims 86 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausavich et al in view of Welleman. As stated above, Ausavich in view of Welleman teaches the limitations of claim 82, including top and bottom support members with support blocks in between. Each solid support block comprises a composite material comprising at least one cellular material and at least one thermal plastic material (wood and polypropylene or polyethylene; see column 2, lines 5-11 and column 4, line 59-64). For claims 86 and 88, Ausavich in view of Welleman fails to teach specific materials, densities/particle diameters for the materials and/or concentrations of materials used in the blocks. It would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the support blocks of Ausavich in view of Welleman, by using different materials, different combinations of materials having different densities, particle diameters, concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on block strength properties desired/required, the materials readily available, personal preferences, etc. It would also have been an obvious consideration to use different types of cellular material and plastics, including polyesters, epoxies and vinylesters or wood, linen flax shives, paper fiber, nut shells, bamboo, etc, for the same

reasons stated above. (Note: the members in these groups of materials being functional equivalents.)

Response to Arguments

Applicant's arguments filed May 16, 2007 have been fully considered but they are not persuasive.

Addressing the drawing objection: please note that even though the top member with the upper plate member construction may be discussed in the specification, it is still not shown in the figures. If applicant wishes to claim this construction, it needs to be shown in one of the figures.

Addressing the art rejections over Ausavich: as stated above, limitations found in intended use/"for" statements are given no weight in the claims. Therefore, much of what is stated in claims 64 and 82 are not being considered as positively claimed. Furthermore, it is contended that the blocks of Ausavich do have upper and lower surface portions devoid of any openings (see Attachment A). Note: there is nothing in the claims that says that the entirety of the upper and lower surfaces are completely devoid of openings. Also, the fasteners being inserted into these portions are not being positively claimed as such.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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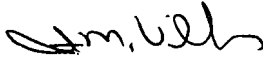
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wilkens
August 2, 2007


JANET M. WILKENS
PRIMARY EXAMINER
Art 3637

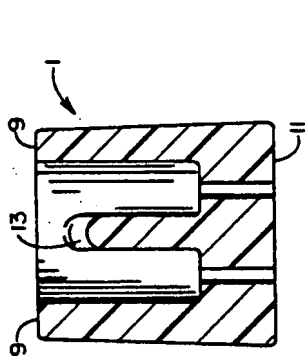


FIG 3

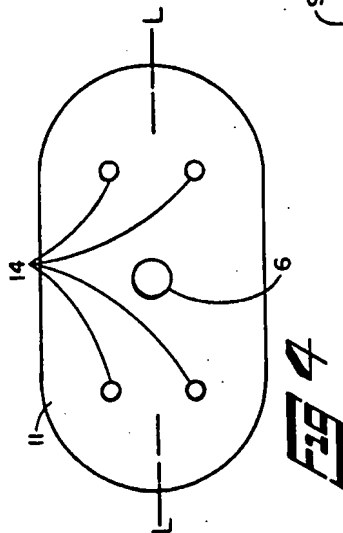


FIG 4

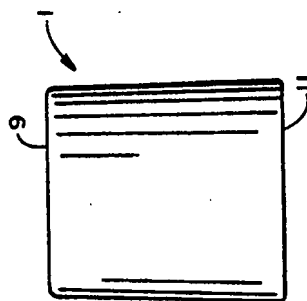


FIG 5

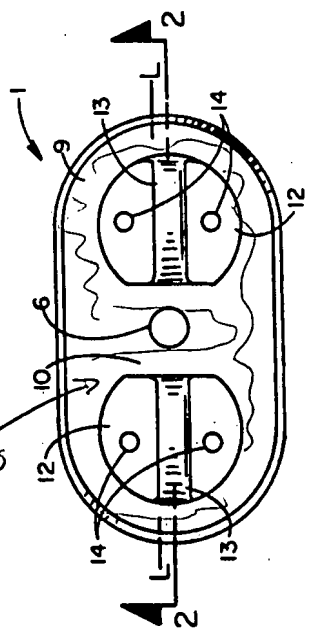


FIG 1

no openings

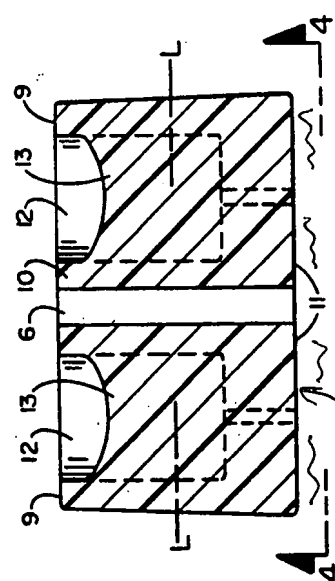


FIG 2

no openings